DOCUMENT RESUME

ED 333 590 EA 023 113

AUTHOR Pressman, Robert
TITLE State Law Challenges to School Discipline: An Outline of Claims and Case Summaries.
INSTITUTION Harvard Univ., Cambridge, Mass. Center for Law and Education.
PUB DATE Dec 90
NOTE 38p.
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Guides - Non-Classroom Use (055)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Court Litigation; *Discipline; Due Process; Elementary Secondary Education; Higher Education; *Legal Problems; Libel and Slander; Privacy; *School Law; *State Legislation; *Student Rights

ABSTRACT

This publication presents topic headings that may be used as a checklist of state law grounds for challenging a disciplinary action. Topics include: (1) illegality in rule adoption; (2) inadequate notice that conduct is subject to discipline; (3) existence of a protected interest; (4) inadequate notice of hearing; (5) inadequate hearing procedures; (6) unauthorized discipline; (7) discipline inconsistent with a body's own rules; (8) discipline inconsistent with a state statute or regulation; (9) excessive discipline; (10) discipline implicating a state-created right to education, free expression, privacy, freedom from defamation, and substantive due process; (11) discipline involving arbitrary, capricious, or unreasonable conduct; (12) disparity in discipline; (13) discipline involving a contract violation; (14) appeal; and (15) remedies. Within each subject matter category are the subheadings "student prevailed," "student did not prevail," and "other related decisions." Within each category, decisions are listed in alphabetical order by state, with the most recent state decision appearing first. (MLH)

**********
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
**********

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

S. Schumacher

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

EA 023 113

BEST COPY AVAILABLE

# State Law Challenges to School Discipline:

# An Outline of Claims and Case Summaries

---

### Notes on Organization

1. The topic headings may be used as a checklist of state law grounds for challenging a disciplinary action.

2. Within each subject matter category, sub-headings are as follows: "Student Prevailed," "Student Did Not Prevail," and "Other Related Decisions." The "did not prevail" category includes, in part, decisions with helpful dicta, although the particular student(s) did not prevail. A related decision is one which does not address student discipline, but sets forth principles potentially useful in a student discipline context.

3. Within each category, decisions are listed in alphabetical order by state. The most recent decision in a state appears first.

4. Statutes or regulations, which may support a claim, differ from state to state. Careful scrutiny of standards in a particular state is a necessity. Some statutes are cited, as *examples*, under the heading "statutes."

### Table of Contents


| | | Page |
|---|---|---|
| 1. | Illegality in Adoption of Rule | 1 |
| 2. | Inadequate Notice that Conduct is Subject to Discipline | 1 |
| | a. No Written Rule | 1 |
| | b. Unconstitutionally Vague Rule | 1 |
| 3. | Existence of a Protected Interest (For Due Process Purposes) | 2 |
| 4. | Inadequate Notice of Hearing | 3 |
| | a. Constitutional Grounds | 3 |
| | b. Statutory, Regulatory, or Other Grounds | 5 |


*(continued)*

| | | Page |
|---|---|---|
| 5. | Inadequate Hearing Procedures | 5 |
| | a. The Timing of the Hearing | 5 |
| | b. The Nature of the Hearing/Constitutional Grounds | 6 |
| | c. The Nature of the Hearing/Statutory, Regulatory, or Other Grounds | 9 |
| | d. Impartial Decisionmaker | 10 |
| | e. The Burden of Going Forward/of Proof | 11 |
| | f. The Evidence Considered | 12 |
| | g. The Exclusion of Evidence | 13 |
| | h. Findings of Fact, Conclusions of Law, Reasons | 13 |
| 6. | Discipline Which Is Unauthorized (Ultra Vires) In Some Regard | 14 |
| | a. Discipline Imposed by an Unauthorized Person | 14 |
| | b. Disciplinary Authority Extended to an Unauthorized Place or Subject Matter | 15 |
| | c. Sanction Unauthorized (Generally or in this Circumstance) | 16 |
| 7. | Discipline Which Is Inconsistent with a Body's Own Rules | 18 |
| 8. | Discipline Which Is Inconsistent with a Substantive Standard of a State Statute or Regulation | 20 |
| 9. | Discipline Which Is Excessive | 22 |
| 10. | Discipline Which Implicates a State-Created Right to: | 24 |
| | a. Education | 24 |
| | b. Free Expression | 25 |
| | c. Privacy | 26 |
| | d. Be Free of Defamation | 26 |
| | e. Substantive Due Process | 26 |
| 11. | Discipline Which Involves Arbitrary, Capricious or Unreasonable Conduct | 27 |
| 12. | Disparity (Including Denial of Equal Protection) in Discipline | 29 |
| 13. | Discipline Which Involves a Contract Violation (*Re* a Private School, or Post-Secondary Educational Institution) | 31 |
| 14. | Appeal | 32 |
| | a. Adequacy of Evidence of Violation | 32 |
| | b. Other Issues | 32 |
| 15. | Remedies | 33 |
| | a. Damages | 33 |
| | b. Other Remedies (Reinstatement, Expungment, Compensatory Services, Other "Make Whole" Relief) | 33 |

## 1. Illegality in Adoption of Rule

*(no entries in this edition)*

## 2. Inadequate Notice that Conduct Is Subject to Discipline

### 2.a. No Written Rule

*Student Prevailed (2.a.)*

Warren County Board of Education v. Wilkinson, 500 So.2d 455, 459-60 (Miss. 1986) (loss of all credit for semester for drinking two or three sips of beer at home with friend before last day of school; there was no odor of beer or misconduct by plaintiff, a strong student; "The school board has called our attention to no rule expressly or impliedly prohibiting a student from drinking beer at home - indeed, we doubt a school board would have any authority to make any such rule, although the point is not before us today. It is elementary that it is a violation of due process to punish one for conduct that has not been lawfully condemned.")

*Student Did Not Prevail (2.a.)*

North v. West Virginia Board of Regents, 332 S.E.2d 141 (W.Va. 1985) (expulsion from medical school for falsification of application materials; plaintiff completed the program; two written rules "when read together, form a logical basis for the expulsion...")

### 2.b. Unconstitutionally Vague Rule

*Student Prevailed (2.b.)*

Myers v. Arcata Union High School District, 75 Cal. Reptr. 68, 72-74 (Cal. App., 1st Dist. 1969) (suspension for violation of policy that "extremes of hair style are not acceptable"; the school official responsible for its enforcement viewed it as barring "deviation from acceptable wear"; the policy was "so vague and standardless" that it violated due process safeguards; it "convey[ed] no commonly understood meaning...")

Mitchell v. King, 363 A.2d 68 (Conn. 1975) (challenge to permanent expulsion for "conduct inimical to the best interests of the school", here, participation in a gang assault upon a student; the statute "is unconstitutionally vague on its face. It does not give fair notice that certain conduct is proscribed...")

Bertens v. Stewart, 453 So.2d 92 (Fla. App. 1984) (suspension for possessing and distributing nonprescription vitamins at school, based upon a rule concerning "medicine"; rule failed to adequately apprise student that these vitamins were subject to its terms; violation of due process clause of Fourteenth Amendment and State constitution)

Galveston Independent School District v. Boothe, 590 S.W. 2d 553, 557 (Tex. Civ. App. 1979) (expulsion of high school student for possession of marijuana off school grounds before the start of school day; discipline based on rule which did not "fairly apprise him" that he could be excluded for conduct "on a street adjacent to the campus" contravened his due process rights under the U.S. Constitution; ruling also rested upon statute or an administrative law doctrine)

*Student Did Not Prevail (2.b.)*

Williams v. Board of Education, 626 S.W.2d 361, 363 (Ark. 1982) (expulsion for excessive absenteeism; "[student] missed one course over twelve times and, for that reason he could not receive credit for the course, and he could be expelled" based upon a school rule which was not "unconstitutionally vague or indefinite")

Keith D. v. Ball, 350 S.E.2d 720, 723 (W.Va. 1986) (expulsion of students for one year for false bomb threats; handbook gave "clear" notice that a student could receive a sanction "more severe" than the "minimum" one provided for each offense)

## 3. Existence of a Protected Interest (For Due Process Purposes)

*Student Prevailed (3.)*

Campbell v. Board of Education, 475 A.2d 289, 297 (Conn. 1984) (denial of course credit and grade reductions, for nonattendance; some form of due process safeguards apply)

Braesch v. DePasquale, 265 N.W.2d 842 (Neb. 1978) (exclusion from high school basketball team for violation of team substance abuse rule implicated a "significant" interest of students, the State having undertaken to "[provide] athletic opportunities to all public school students" "as a part of its program for public education"; assuming a protected interest was implicated, adequate procedural protections were provided)

Duffley v. N.H. Interscholastic Athletic Assoc., 446 A.2d 462, 466-67 (N.H. 1982) (denial of additional year of high school athletic eligibility; consideration of State regulations, Association goals, and "common sense recognition of the benefits, both educational and economic, that frequently accrue to those high school students who participate in interscholastic athletic competition" leads to the conclusion "that the right of a student to participate in interscholastic athletics" is protected by *state* procedural due process safeguards)

University of Houston v. Sabeti, 676 S.W.2d 685, 687-88 (Tex. Ct. App. 1984) (permanent expulsion for academic dishonesty; attendance at a state university is a protected property interest)

North v. West Virginia Board of Regents, 233 S.E.2d 411 (W. Va. 1977) (expulsion from medical school and loss of all credits for falsifying initial application implicated protected interests); North, 332 S.E.2d 141, 145-46 (W. Va. 1985) (due process afforded)

*Student Did Not Prevail (3.)*

Makanui v. Department of Education, 721 P.2d 165, 170 (Hawaii App. 1986) (suspension from high school track team for setting off fireworks on school grounds; no protected interest)

Knight v. Board of Education, 348 N.E.2d 299, 303 (Ill. App. 4th Dist. 1976) (grade reductions for unexcused absences; "...we deem the subsequent disadvantage he might receive from the lower grades [was] a sufficient showing of damage to a property right")

Slocum v. Holton Board of Education, 429 N.W.2d 607, 611-12 (Mich. App. 1988) (grade reduction for nonattendance; no liberty or property interest)

Mifflin County School District v. Stewart, 94 Pa. Commw. 313, 503 A.2d 1012, 1013 (Pa. Commw. Ct. 1986) (commencement ceremony is symbolic, not a component of the educational process; exclusion from the ceremony implicates no property interest)

New Braunfels Independent School District v. Armke, 658 S.W. 2d 330, 332 (Tex. App. 1983) ("...reduction of Appellees' six-week grades by three points for each day of suspension has no adverse impact on Appellees' property right to a public education."; "Furthermore, the evidence does not show that imposition of the scholastic penalties proposed will have any negative impact on the honor, reputation or name of either Appellee. The record shows that Appellees, at the time of hearing below, had already been admitted to the university of their choice and does not show that imposition of the scholastic penalties in this instance will adversely affect them in their educational, professional or personal lives in the future.")

*Other Related Decisions (3.)*

Tarkanian v. National Collegiate Athletic Association, 741 P.2d 1345, 1349 (Nev. 1987), rev'd on other grounds, 109 S.Ct. 454 (1988) (basketball coach suspended; established practice of renewing one-year contracts gives rise to property interest; in addition, as limiting plaintiff's position to teaching physical education "would be a drastic change," this interest encompassed his coaching position; liberty interest found under "stigma-plus" test where dismissal would foreclose future employment opportunities and reassignment as professor without coaching assignment would drastically alter his position)

## 4. Inadequate Notice of Hearing

### 4.a. Constitutional Grounds

*Student Prevailed (4.a.)*

Woody v. Burns, 188 So.2d 56 (Fla. App. 1966) (faculty committee of college of University excluded student for misconduct "without notice and hearing"; denial of due process rights)

Labrosse v. St. Bernard Parish School Board, 483 So.2d 1253, 1257-58 (La. App. 1986) (student's expulsion could not be upheld on the basis of statutory violations not set forth in the notice which he had been given)

Warren County Board of Education v. Wilkinson, 500 So. 2d 455, 461 (Miss. 1986) (denial of semester's credit; failure to abide by school rules concerning written notice constituted denial of due process; notice of date of hearing alone is insufficient; notice must state what rule was violated);

Carey v. Savino, 91 Misc. 2d 50, 397 N.Y.S.2d 311 (N.Y. Sup. Ct. 1977) (expulsion; notice must contain a statement not merely of who observed the alleged wrongful actions, but must also clearly allege the facts upon which the charges are based.)

North v. West Virginia Board of Regents, 233 S.E.2d 411, 417 (W.Va. 1977) (expulsion; "a formal written notice of charges")

*Student Did Not Prevail (4.a.)*

John A. v. San Bernardino City Unified School District, 187 Cal. Rptr. 472, 654 P.2d 242, 247-48 (Cal. 1982) (expulsion; no obligation to inform student that free legal assistance available from legal aid office)

Walter v. School Board of Indian River County, 518 So.2d 1331, 1333-35 (Fla. App. 4 Dist. 1987) (expulsion for remainder of year, with the notice reading in part as follows: "Found what appeared to be a marijuana joint in her possession"; "charging documents herein fairly apprised [student] of the offense - possession of marijuana," in violation of a school rule)

Jones v. Board of Trustees, 524 So. 2d 968, 972 (Miss. 1988) (expulsion for semester; no "substantial prejudice" from asserted defect of notice)

Rutz v. Essex Junction Prudential Committee, 457 A.2d 1368, 1374 (Vt. 1983) (expulsion; alleged lack of notice of charges; where student was "well aware of charges" and admitted to them, and the district substantially complied with its regulations, there was "a clear absence of any prejudice")

*Other Related Decisions (4.a.)*

Kraut v. Rachford, 51 Ill. App. 3d 206, 366 N.E.2d 497, 503 (Ill. Ct. App. 1977) (student dropped from enrollment on grounds of non-residency; speaking of due process generally, court stated, "where the interests of a minor student are involved, his parents should be notified of the pending action")

Brown v. South Carolina State Board of Education, 391 S.E.2d 866 (S.Car. 1990) (challenge to regulation providing for invalidation of teaching certificate if "any testing company" invalidates a test score based upon which a certificate has been issued; in that it fails to provide notice and the opportunity to be heard, the regulation does not accord with due process standards)

Farley v. Board of Education of Mingo County, 365 S.E. 2d 816 (W.Va. 1988) (where board sought to discharge two teachers as unneeded, written notice of hearing to be held on March 27, received on March 25 and March 26, was "unreasonable as it deprived the teachers of any opportunity to challenge the bases for their proposed dismissals"; court interpreted statute in light of constitutional principles)

#### 4.b. Statutory, Regulatory, or Other Grounds

*Student Prevailed (4.b.)*

Tedeschi v. Wagner College, 427 N.Y.S. 2d 760, 765 (N.Y. 1980) (suspension from college, in part for disciplinary reasons; "...obligation of the college in effecting the suspension to call plaintiff's attention to the further procedures provided for by the guidelines..."; ruling based on contractual rights and law of associations)

Ross v. DiSare, 500 F. Supp. 928, 934 (S.D.N.Y. 1977) (class action challenging discipline practices in the Newburgh school system; the evidence establishes violations of provisions of §3214 of the New York Education Law, requiring "3) that the suspended student and his or her parents be notified of the reasons for the suspension; [and] 4) that the student and parents be notified, prior to the hearing, of written statements to be introduced into evidence at the hearing;..."; rulings on pendent state claims)

Matter of Lawlor, 11 Educ. Dept. Rep. 261, 263 (N.Y. Educ. Comm'r 1972) (student suspension cannot be based upon acts not specified in the notice)

Mifflin County School District v. Stewart, 503 A.2d 1012, 1014 (Pa. Cmwlth. 1986) (two consecutive suspensions of three days and four days; the additional four day suspension was invalid because the student's parents did not receive prior written notice of the reasons for the proposed discipline, as required by a Pennsylvania regulation)

*Other Related Decisions (4.b.)*

Williams v. Turlington, 498 So.2d 468 (Fla. App., 3d Dist. 1986) (permanent revoction of teaching certificate was improper where teacher had been given notice only of a possible non-permanent revocation)

## 5. Inadequate Hearing Procedures

#### 5.a. The Timing of the Hearing

*Student Prevailed (5.a.)*

Garcia v. Los Angeles County Board of Education, 177 Cal. Rept. 29, 31-32 (Cal. App., 2d Dist. 1981) (5-day suspension and subsequent expulsion for "heated argument" with another student and possessing knife at school; the board failed to comply with the

statutory requirement establishing the deadline for conducting an expulsion hearing; therefore, the expulsion was invalid)

Machosky v. State University of New York at Oswego, 546 N.Y.S. 2d 513, 515-16 (Sup. Ct., Oswego Cty., N.Y. 1989) (failure to adjourn hearing to allow student to secure an advisor "was an abuse of discretion"; student had made "a good-faith effort" to secure an advisor and it "does not appear that any prejudice would have occurred to the university...") (see §15b. re remedy)

Carey v. Savino, 91 Misc. 2d 50, 397 N.Y.S.2d 311, (N.Y. Sup. Ct. 1977) (permanent expulsion; 21 hours insufficient where student had a statutory right to counsel; shortness of notice denied "adequate opportunity" to secure counsel)

*Student Did Not Prevail*

Stratton v. Wenona Community Unit District No. 1, 551 N.E.2d 640, 648 (Ill. 1990) (two days written notice adequate where "both parents and Anthony were well aware of the instances of...misconduct leading up to the expulsion"), reversing, 526 N.E.2d 201 (Ill. App. 3 Dist. 1988)

Barletta v. State University Medical Center, 533 So. 2d 1037, 1040 (La. App. 1988) (expulsion from dental school; "Further, given appellant's familiarity with the charges brought against him by the committee, notice one week prior to the hearing was sufficient time for him to obtain alternate representation if he so desired.")

**5.b. The Nature of the Hearing/Constitutional Grounds**

*Student Prevailed (5.b.)*

Aguirre v. San Bernardino City Unified School District, 170 Cal. Rept. 205, 214-16 (Cal. App., 4th Dist. 1981) (expulsion for 6 1/2 months for unprovoked attack on two students; signed statements from 8 students were read into the record at the hearing preceding the expulsion; "...the due process clause of the 14th Amendment and of article 1, section 7 of the California Constitution guarantees to a student faced with expulsion from a public high school for misconduct the opportunity to confront and cross-examine the adverse witnesses unless the hearing officer or panel specifically finds that the granting of such a right would expose witnesses to risk of injury..."; in the absence of such a finding, this expulsion was unlawful) (see §15b. re remedies)

Woody v. Burns, 188 So.2d 56 (Fla. App. 1966) (faculty committee of college of University excluded student for misconduct "without notice and hearing"; denial of due process rights

Warren County Board of Education v. Wilkinson, 500 So. 2d 455, 458, 461 (Miss. 1986) (loss of credit for a semester; accusing teachers must be available at hearing for cross-examination)

Tibbs v. Board of Education, 114 N.J. Super. 287, 295-96, 276 A.2d 165, 170 (N.J. Super. Ct. 1971) (expulsions of high school students based upon physical assaults on other students; expulsions set aside "for failure to produce the accusing witnesses for testimony and cross-examination")

DePrima v. Columbia-Green Community College, 392 N.Y.S.2d 348 (N.Y. Sup. Ct. 1977) (student facing, *inter alia*, disciplinary probation, thereby depriving him of participation in student activities, was denied due process where he was not allowed to confront and cross-examine opposing witnesses and call his own witnesses)

In re DeVore, 11 Educ. Dept. Rep. 296 (N.Y.S. Educ. Comm'r 1972) (indefinite suspension overturned where superintendent based his decision on student's choosing to remain silent; violation of school's obligation to come forward with sufficient evidence and of student's right to a presumption of innocence) (quoted at length in Chapter III.F.7., "Burden of Proof, Presumption of Innocence")

North v. West Virginia Board of Regents, 332 S.E.2d 141, 143 (W.Va. 1985) (expulsion from medical school for falsification of application materials; plaintiff completed the program; "Before a student can be permanently expelled from a State-supported university, he is entitled to the following due process rights: a formal written notice of charges; sufficient opportunity to have retained counsel at any hearings on the charges, to confront his accusers, and to present evidence on his own behalf; an unbiased hearing tribunal; and an adequate record of the proceedings.")

*Student Did Not Prevail (5.b.)*

Barletta v. State University Medical Center, 533 So. 2d 1037, 1040 (La. Ct. App. 1988) (expulsion from dental school for conduct "contrary to the best interests" of school, based upon student's violation of state law against dental hygienist's performing unauthorized operations; student "accorded every possible benefit of due process")

Birdsey v. Grand Blanc Community Schools, 344 N.W.2d 342, 346 (Mich. Ct. App. 1983) (expulsion; "Due process does not require an opportunity to confront and cross-examine inasmuch as plaintiffs did not refute the underlying facts of the charge.")

Jones v. Pascagoula Municipal Separate School District, 524 So. 2d 968 (Miss. 1988) (expulsion for remainder of school year; confrontation and cross-examination not required in circumstances of this case)

Braesch v. DePasquale, 206 Neb. 726, 734-35, 265 N.W.2d 842, 846 (Neb. 1978), cert. denied, 439 U.S. 1068 (1979) (exclusion from basketball team for remainder of season; where students admitted guilt, procedures which included hearing on appropriate penalty were found adequate);

Mary M. v. Clark, 473 N.Y.S.2d 843 (A.D. 3 Dept. 1984) (student suspended from state university for one term for cheating; "... due process was accorded..."; "...a written record...and the right to counsel were [not] rights fundamentally due petitioner..."; "Petitioner was served with a written notice of charges; she was made aware of grounds which would justify her expulsion or suspension by way of the student handbook; the hearing tribunal afforded her an opportunity to hear and confront the evidence presented

against her and an opportunity to be heard and to offer other evidence if she chose; she was accorded the right to have someone from the college community to assist her in the proceedings; she was informed of the tribunal's finding, she was given access to its decision for her personal review; and finally, she was advised in writing of the discipline imposed."

McNaughton v. Circleville Board of Education, 345 N.E.2d 649, 656 (Ohio Ct. Common Pleas 1974) (three-day school suspensions and forty-day suspensions from athletic activity; if students had denied the accusations, more formal proceedings might have been required)

University of Houston v. Sabeti, 676 S.W.2d 685 (Tex. Ct. App. 1984) (expulsion; where, overall, "record shows that a fair hearing was conducted which gave [Sabeti] fair opportunity to defend...," the fact that "his counsel of choice, a law student" could attend the hearing and advise him, but not "speak, argue or question witnesses...," did not violate procedural safeguards; however, "[m]inors may be more in need of counsel's participation than would an adult with greater education...")

Racine Unified School District v. Thompson, 321 N.W. 2d 334, 337-39 (Wisc. App. 1982) (expulsion; "...due process...satisfied even though some of the testimony presented was hearsay given by members of the school staff")

*Other Related Decisions (5.b.)*

North v. State of Iowa, 400 N.W.2d 566, 570 (Iowa 1987) (denial of readmission to medical school; "...she was given a chance to meet with the several committees who would make the determination that she should continue, and she was able to have representatives appear on her behalf. She was always given notice and an opportunity to be heard. The faculty committees which ultimately made the decisions on every student's ability to proceed with his or her medical education made a fair, reasonable, and meaningful determination of Dr. North's ability to continue with her medical education, based on all the information before them...")

Board of Education of City of Plainfield v. Cooperman, 105 N.J. 587, 523 A.2d 655, 661-62 (N.J. 1987) (question of procedures to apply in hearings on admission of children with AIDS, ARC or HTLV-III antibody to public schools; due process requires that parties have the right to call witnesses and to cross-examine adverse witnesses; the court notes, in part, a student's right to education under the New Jersey Constitution)

Brown v. South Carolina State Board of Education, 391 S.E.2d 866 (S.Car. 1990) (challenge to regulation providing for invalidation of teaching certificate if "any testing company" invalidates a test score based upon which a certificate has been issued; in that it fails to provide notice and the opportunity to be heard, the regulation does not accord with due process standards)

### 5.c. The Nature of the Hearing/Statutory, Regulatory, or Other Grounds

*Student Prevailed (5.c.)*

Tedeschi v. Wagner College, 49 N.Y.2d 652, 662 n.*, 404 N.E.2d 1302, ---- n.*, 427 N.Y.S.2d 760, 765 n.* (N.Y. 1980) (expulsion; claim against private college based upon law of associations and contract law; "...the student should have some opportunity to justify his behavior...")

Matter of Mooney, 180 N.Y.L.J. No. 28, p. 12 (8/10/78) (Clearinghouse No. 25,136A) (principal improperly suspended students where there was no opportunity for a conference as required by statute)

Carey v. Savino, 91 Misc. 2d 50, 397 N.Y.S.2d 311 (N.Y. Sup. Ct. 1977) (long-term suspension from public school; short period between notice and hearing denied student adequate opportunity to obtain counsel, a statutory right)

Ross v. DiSare, 500 F. Supp. 928, 934 (S.D.N.Y. 1977) (class action challenging discipline practices in the Newburgh school system; the evidence establishes violations of provisions of §3214 of the New York Education Law requiring "1) that a student suspended in excess of five days be given the opportunity to question adverse witnesses; [and] 2) that a verbatim record of the disciplinary hearing be kept..."; rulings on pendent state claims)

Schank v. Hegele, 521 N.E.2d 9, 11-12 (Ohio Com. Pl. 1987) (challenge to expulsions; on motion for preliminary injunction, court rules that procedures may have violated open meeting law)

Norristown Area School District v. A.V., 495 A.2d 990 (Pa. Cmwlth. 1985) (expulsion; an expulsion hearing held after the filing of an appeal was "void;" school board violated statute when it "did not record the hearing, made no findings of fact and issued a delayed adjudication without findings and without setting forth reasons for the expulsion"; "the remedy is a de novo hearing on remand")

*Student Did Not Prevail (5.c.)*

Mary M. v. Clark, 473 N.Y.S.2d 843 (A.D. 3 Dept. 1984) (student suspended from state university for one term for cheating; the State Administrative Procedure Act was inapplicable to this proceeding)

*Other Related Decisions (5.c.)*

Marston v. Gainesville Sun Publishing Co., 341 So. 2d 783 (Fla. Dist. Ct. App. 1976) (student disciplinary hearings properly closed; open meeting law does not require hearings to be open to the public or press without student consent)

### 5.d. Impartial Decisionmaker

*Student Prevailed (5.d.)*

Carey v. Savino, 91 Misc.2d 50, 397 N.Y.S.2d 311 (N.Y. Sup. Ct. 1977) (expulsion; "While the conduct of respondents' attorney at the hearing was probably within the guidelines of due process, at least for the appearance of fairness, it would have been more proper to aid the hearing officer only when requested to do so, and also not to be present during the deliberations of the board")

Marshall v. Maguire, 102 Misc. 2d 697, 424 N.Y.S.2d 89 (N.Y. Sup. Ct. 1980) (expulsion; participation by same college official in each of the first two levels of the disciplinary process, in violation of school's own rule, "so taints the proceedings" that the student's right to an impartial tribunal was impaired; "new appeal should be heard by a newly constituted Judicial Council in order to avoid any possibility of pre-judging")

Pittsburgh Board of Public Education v. M.J.N., 105 Pa. Commw. 397, 407, 524 A.2d 1385, 1389 (Pa. Commw. Ct. 1987) (thirty day suspension; student deprived of due process by impermissible commingling of advisory and prosecutorial functions by two lawyer staff; "despite the practicalities involved, when the legal staff of a public agency consists of two attorneys, one which supervises the other, and while one acts in his customary capacity as advisor to the Board and the other acts as prosecutor, impermissible commingling has occurred")

*Student Did Not Prevail (5.d.)*

John A. v. San Bernardino City Unified School District, 33 Cal. 301, 654 P.2d 242, 187 Cal. Rptr. 472 (Cal. 1982) (expulsion; not a violation of due process to have teachers sitting as fact finders; hearing was fair and impartial)

Rucker v. Colonial School District, 517 A.2d 703, 705 (Del. Super. Ct. 1986) (expulsion; no right to a hearing officer who is not an employee of the school district, only to a fair and impartial hearing officer)

Schank v. Hegele, 521 N.E. 2d 9, 11 (Ohio Com. Pl. 1987) (expulsion; combining investigative and adjudicatory functions not, per se, a due process violation)

*Other Related Decisions (5.d.)*

DeKoevend v. Board of Education of West End School, 688 P.2d 219 (Colo. 1984) (teacher dismissal; impartiality of board defeated by presence of school superintendent and principal during deliberations)

Board of Education of Arapahoe County v. Lockhart, 687 P.2d 1306, 1308-09 (Colo. 1984) (teacher dismissal; board may not hear statement from school attorney during deliberations, while excluding teacher's attorney; "violat[ion] of basic standards of fairness in an administrative adjudication")

McIntyre v. Tucker, 490 So. 2d 1012 (Fla. Dist. Ct. App. 1986) (teacher's employment terminated; school board attorney may not act simultaneously as prosecutor and legal

advisor; "In practice, impartiality and zealous representation are inherently incompatible in the same person at the same time")

Hunt v. Sanders, 554 N.E.2d 285 (Ill. App. 1990) (allowing State Superintendent to prosecute petition for revocation of teaching certificate before board, and then make final determination, would deny due process rights)

Kraut v. Rachford, 51 Ill. App. 3d 206, 216, 366 N.E.2d 497, 504-05 (Ill. Ct. App. 1977) (student dropped on basis of non-residency; "Due process of law, by necessity, requires an impartial decision maker and while this role is not barred to one involved in some aspects of a case, the final arbiter should not have participated in making the determination under review;" not violated here where administrator took previous action concerning different decision)

Plymouth-Canton Community School District v. State Tenure Commission, 419 N.W.2d 783, 785 (Mich. Ct. App. 1988) (teacher dismissal; where hearing officer and school board representative are members of the same law firm, there is no per se violation of due process; "To succeed with a due process challenge, a tenured teacher must show actual bias in the proceedings or a risk or probability of unfairness that is too high to be constitutionally tolerable")

Crump v. Board of Education, 378 S.E. 2d 32, 40 (N.C. App. 1989) (dismissal of teacher; school board members' denial of their pre-hearing conduct and statements established "disqualifying personal bias"; "...the jury reasonably could have inferred that these disavowals were made to mask a presettled judgment").

Beaver v. Ortenzi, 105 Pa. Commw. 361, 524 A.2d 1022 (Pa. Commw. Ct. 1987) (court receptive to claim of improper commingling of "prosecutorial and adjudicatory" functions by college hearing panel; however, student's penalty of "suspended suspension" did not rise to level of a constitutional deprivation)

Steffen v. Board of Directors, 32 Pa. Commw. 187, 377 A.2d 1381 (Pa. Commw. Ct. 1977) (teacher dismissal; school board properly kept prosecutorial and judicial functions separate by use of two attorneys)

### 5.e. The Burden of Going Forward/of Proof

*Student Prevailed (5.e.)*

John A. v. San Bernardino Unified School District, 33 Cal. 3d 301, 307, 654 P.2d 242, 246, 187 Cal. Rptr. 472, 476 (Cal. 1982) (expulsion; "The [statute's] requirement that the board's decision to expel be supported by a preponderance of the evidence establishes that the burden is on the school district to establish cause for expulsion")

In re DeVore, 11 Educ. Dept. Rep. 296 (N.Y.S. Educ. Comm'r 1972) (indefinite suspension overturned where superintendent based his decision on student's choosing to remain silent; violation of school's obligation to come forward with sufficient evidence and of student's right to a presumption of innocence) (quoted at length in Chapter III.F.7., "Burden of Proof, Presumption of Innocence")

*Student Did Not Prevail (5.e.)*

Kalinsky v. State University of New York, 557 N.Y.S.2d 577, 579 (A.D. 3 Dept. 1990) (student found to be guilty of plagiarism and denied right to register for fall semester; university "was [not] required to prove the charge by clear and convincing evidence")

### 5.f. The Evidence Considered

*Student Prevailed (5.f.)*

John A. v. San Bernardino City Unified School District, 654 P. 2d 242, 246 (Cal. 1982) (expulsion for remainder of school year for unprovoked attack on two students; where "evidence...was in sharp dispute," and administration relied upon written statements of other students although there was "no showing that the witnesses were unavailable...," expulsion did not accord with statute providing that "...evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs")

Adams v. School Board of Brevard County, 470 So. 2d 760 (Fla. Dist. Ct. App. 1985) (expulsion of five students for remainder of school year and summer session; hearsay evidence is admissible to support a finding of fact so long as there is other competent evidence)

Franklin v. District Board of Education, 356 So. 2d 931 (Fla. Dist. Ct. App. 1978) (expulsion; under state law, hearsay evidence could be used as supplementary proof, but affidavits, standing alone, are not sufficient to support a finding unless they would be admissable in civil actions)

*Student Did Not Prevail (5.f.)*

Shank v. Hegele, 521 N.E. 2d 9 (Ohio Com. Pl. 1987) (expulsions for alleged vandalism; reliance on "hearsay evidence" permissible)

In re Appeal of McClellan, 82 Pa. Commw. 75, 475 A.2d 867 (Pa. Commw. Ct. 1984) (twenty-four day suspension; under governing statute, board is not bound by technical rules of evidence and may consider all evidence that is relevant and of "reasonably probative value")

Racine Unified School District v. Thompson, 107 Wis. 2d 657, 664, 321 N.W.2d 334, 337-38 (Wis. Ct. App. 1982) (expulsion; "We are persuaded ... that the hearsay statements from schoolteachers or staff members were admissible. We agree ... that a lay board cannot be expected to observe the niceties of the hearsay rule. Moreover, in the absence of an allegation of bias, we can conceive of no reason why school staff would fabricate or misrepresent statements of this sort. Such statements, then, have sufficient probative force upon which to base, in part, an expulsion")

*Other Related Decisions (5.f.)*

Morrison v. University of Oregon Health Sciences Center, 685 P.2d 439 (Oregon App. 1984) [review of order dismissing student from School of Dentistry for "lack of professional skills development and lack of adequate clincal performance...." Rulings (in reversing and remanding): The Academic Dismissal Hearing Committee erred by considering, during its deliberations, factual information outside the hearing record in violation of the school's guidelines and ORS 183.450(2)]

### 5.g. The Exclusion of Evidence

*Student Did Not Prevail (5.g.)*

Gordon J. v. Santa Ana Unified School District, 208 Cal. Rptr. 657 (Cal. App. 4 Dist. 1984) (suspension of high school student for a year for marijuana possession following search by vice principal based upon vague, stale information; "...the exclusionary rule is fully available in criminal prosecutions and juvenile proceedings with respect to evidence illegally obtained by school officials..."; "...we hold the exclusionary rule inapplicable in high school disciplinary proceedings..."; implying, however, that there might be circumstances where the rule should apply, for example, in the case of an unlawful search of an entire student body)

### 5.h. Findings of Fact, Conclusions of Law, Reasons

*Student Prevailed (5.h.)*

Kalinsky v. State University of New York, 557 N.Y.S.2d 577, 578 (A.D. 3 Dept. 1990) (student found to be guilty of plagiarism and denied right to register for fall semester; "due process entitled peitioner to a statement detailing the factual findings and the evidence relied upon by the decision-maker in reaching the determination of guilt")

Norristown Area School District v. A.V., 495 A.2d 990 (Pa. Cmwlth. 1985) (expulsion; an expulsion hearing held after the filing of an appeal was "void;" school board violated statute when it "did not record the hearing, made no findings of fact and issued a delayed adjudication without findings and without setting forth reasons for the expulsion"; "the remedy is a de novo hearing on remand")

Big Spring School District Board of Directors v. Hoffman, 489 A.2d 998, 1000-01 (Pa. Cmwlth. 1985) (challenge to 30-day exclusion from school and other sanctions for violation of drug policy; school board violated Pennsylvania statute requiring that "adjudications" must contain "findings and the reasons for the adjudication....")

*Student Did Not Prevail (5.h.)*

Jones v. Pascagoula Municipal Separate School District, 524 So. 2d 968, 973 (Miss. 1988) (expulsion for a semester; "Especially where there are multiple allegations, findings of fact should be made.")

## 6. Discipline Which Is Unauthorized (Ultra Vires) In Some Regard

### 6.a. Discipline Imposed by an Unauthorized Person

*Student Prevailed (6.a.)*

Woody v. Burns, 188 So.2d 56 (Fla. App. 1966) (faculty committee of college of University excluded student for misconduct "without notice and hearing"; the faculty committee was not authorized to act either by the legislature, or governing boards)

Underwood v. Board of Education, 498 N.Y.S.2d 907 (N.Y. App. 1986) (challenge to two five-day suspensions imposed by principal; as school board had not delegated authority to principals to suspend pupils, which board had authority under statute to do, suspensions were invalid; suspension imposed by superintendent was lawful) (see §15b. re remedy)

Matter of Mooney, 180 N.Y.L.J. No. 28, p. 12 (8/10/78) (Clearinghouse No. 25,136A) (principal exceeded his authority by suspending students where state law permitted school boards to delegate authority to suspend for up to 5 days, but there was no evidence that board had done so)

Ross v. DiSare, 500 F. Supp. 928, 934 (S.D.N.Y. 1977) (class action challenging discipline practices in the Newburgh school system; suspensions have been made, improperly, by school employees not authorized to exclude students under the relevant state statute; ruling on pendent state claim)

*Student Did Not Prevail*

Abadie v. St. Bernard Parish School Board, 485 So.2d 596, 597 (La. App. 4th Cir. 1986) (expulsion for inviting undercover agent to share marijuana cigarette on school grounds; although a statute provides that "any teacher or other school employee may report any violations...," it would be "untenable" to construe this law as precluding other persons from reporting violations)

*Other Related Decisions (6.a.)*

Hunt v. Sanders, 554 N.E.2d 285 (Ill. App. 1990) (Teacher Certification Board rather than State Superintendent had final authority, under Illinois statutes, to revoke teacher certificates)

State v. Bear, 452 N.W. 2d 430 (Iowa 1990) (under federal statute, 25 U.S.C. §231, Iowa magistrate had no jurisdiction over alleged violations of compulsory attendance law by native American parents, as tribe had not consented to exercise of this jurisdiction)

### 6.b. Disciplinary Authority Extended to an Unauthorized Place or Subject Matter

*Student Prevailed (6.b.)*

Labrosse v. St. Bernard Parish School Board, 483 So. 2d 1253, 1257-59 (La. App. 1986) (expulsion for possession of marijuana in residence off school grounds at lunch time; as statute addressed possession only "in school buildings, on school grounds, or on school buses...", the expulsion was unlawful)

Howard v. Clark, 299 N.Y.S.2d 65 (Sup. Ct., Westchester Cty. 1969) (suspension from high school based upon arrest for criminal possession of a hypodermic instrument, off school grounds; facts did not establish a ground for suspension under §3214 of New York Education Law; defendants "...exceeded the powers conferred upon them by the Education Law...")

Independent School District No. 8 v. Swanson, 553 P.2d 496, 501-04 (Okla. 1976) (suspension for failure to conform to student hair code; plaintiffs' evidence revealed "that their hair length did not have any effect on the education process of the school system"; "...the scope of a school board's rule making authority is limited to adopting rules that have a reasonable connection with the educational function entrusted to it by the public"; "In view of the explicit state commitment to the education of each child, it is certain that while a student's right to be present in school is not absolute, any rule which would exclude him must exist for a reasonable and necessary purpose."; "A rule imposing such a significant invasion into the private lives of children and their parents requires a showing of greater justification and demonstrable need by the school board than one regulating purely in-school appearance, such as a rule about lengths of skirts."; "The record is void of any factual showing which establishes a reasonable connection between this rule controlling hair length of male students and a proper function of the Seiling Public Schools.")

Neuhaus v. Federico, 505 P.2d 939 (Ore. App. 1973) (suspensions for violation of rule that "Hair must be kept off the ears [and], collar..."; where plaintiffs "came forward with evidence that their hair length had not caused disruptions...," and school authorities offered only "pure opinion" to the contrary, the rule was not within the scope of defendants' authority)

*Student Did Not Prevail (6.b.)*

In Re Suspension of Huffer, 546 N.E.2d 1308, 1312 (Ohio 1989) (4 to 3) (student suspended from high school for attending wrestling practice after drinking two beers; the court upheld, as construed and appplied, a rule punishing a student's "be[ing] under the influence of any...alcoholic beverage" which included in part "...manifesting...odor of chemicals..."; court noted that the "manifest[ation]" was "a starting point"; and that an administrator "must uncover further corroborating evidence", as occurred in this case)

Shows v. Freeman, 230 So.2d 63 (Miss. 1969) (suspension for violation of rule that "male students should not wear their hair longer than two inches, or two finger widths, above the eyebrows;" as "[u]nusual male hair styles may disrupt and impede maintenance of proper classroom atmosphere or decorum," the rule was within the scope of the school board's rule making authority as defined by statute)

Craig v. Buncombe County Board of Education, 343 S.E.2d 222, 224 (N.C. App. 1986) [suspensions from school for violations of school board no-smoking rule; as smoking implicates areas which are a proper subject of school board concern (i.e., health, cleanliness, and safety), the rule is within the scope of the board's authority]

### 6.c. Sanction Unauthorized (Generally or in this Circumstance)

*Student Prevailed (6.c.)*

Burton v. Board of Education of the City of Pasadena, 71 C.A.3d, (Cal. App. 1977) (challenge to policy conditioning parents' right to enroll child in magnet school on their approving use of corporal punishment; at this time, state law barred corporal punishment absent parental consent; the policy is beyond the Board's authority)

Gutierrez v. School District R-1, 585 P.2d 935 (Colo. App. 1978) (challenge to denial of academic credit for excessive absences; as district policy included absences due to suspension and excused absences, contrary to a state statute, the denial of credit "was in excess of the school district's authority")

Dorsey v. Bale, 521 S.W.2d 76 (Ky. 1975) (challenge to rule providing for reduction of grades for time missed for "unexcused absences," including days missed due to suspension; as the legislature established sanctions "for serious breaches of school regulations" without including grade reduction, the school board did not have authority to adopt that sanction) (see §15b. re remedy)

Sprague v. Harrison Community Schools, Case No. 80-005300-PZ, Circuit Court, Clare Cty., Mich., Opinion, 9/10/80 (Clearinghouse No. 29,225B) (challenge to attendance policy providing for denial of credit for missing eight or more days in a term; the policy is beyond the defendants' authority under state law) (see §15b. re remedy)

King v. Farmer, 424 N.Y.S.2d 86 (Sup. Ct., Westchester Cty. 1979) (principal "dropped" student from rolls of high school for irregular attendance, in accord with district policy; this sanction is not authorized; "The only appropriate action which may be taken in such a case is to establish a day school, or set apart rooms in public school buildings for the

instruction of those school delinquents as provided for in Section 3214(2) of the Education Law.") (see §15b. re remedy)

Matter of Blackman, 419 N.Y.S.2d 796 (Sup. Ct., Ulster Cty. 1978) (student dropped from class for truancy, in accord with district rule; truancy is not listed as a ground for suspension in the state suspension law; authority "should not be implied...when the net effect is that a pupil who violates the compulsory education law often enough is excused from further compliance..."; the discipline "rests upon an unauthorized rule...") (see §15b. re remedy)

Shuman v. Cumberland Valley School District Board of Directors, 536 A.2d 490 (Pa. Cmwlth. 1988) (under 24 P.S. §16-1613, "a student may not be denied a high school diploma where he has successfully completed all the course-work required for graduation and is expelled after successful completion of his courses") (see §15b. re remedy)

Katzman v. Cumberland Valley School District, 479 A.2d 671 (Pa. Cmwlth. 1984) [student's discipline included, in accord with district policy, grade reduction of ten points (two points for each day on suspension) for each course, for second marking period; "...[W]e cannot conclude that the legislature in authorizing the adoption and enforcement of 'reasonable rules and regulations' intended to sanction a grade reduction policy, without an optional make up program for the kind of infraction involved here."] (see §15b. re remedy)

Alvin Independent School District v. Cooper, 404 S.W.2d 76, 78 (Tex. Civ. App. 1966) (challenge by former student, under age 18, to rule providing for permanent exclusion of "a mother who has a child..."; "The effect of [Texas] statutes when construed together is to require a school district to admit persons over six years of age and under 21 years of age provided they, their parents or guardian reside in the district. The school district is therefore without legal power to adopt the rule involved in this case.")

Keith D. v. Ball, 350 N.E.2d 720, 723-24 (W.Va. 1986) [expulsion of students for one year for false bomb threats; under statute, expulsion must be limited to "180 days of instruction, divided into two 90-day semesters" (here, Board expelled students "for a calendar year")]

Potter v. Miller, 287 S.E.2d 163, 164-65 (W.Va. 1981) (treating absences due to "bad conditions of the roads" as unexcused was inconsistent with state statute) (see §15b. re remedy)

*Student Did Not Prevail (6.c.)*

Williams v. Board of Education, 626 S.W.2d 361, 363 (Ark. 1982) (expulsion for excessive absenteeism; Arkansas law authorizes expulsion for nonattendance)

Campbell v. Board of Education, 475 A.2d 289 (Conn. 1984) (challenge to two policies providing "academic sanctions for nonattendance"; i.e., denial of "course credit" for absences in a class in excess of 24 per year, with certain exceptions; and a five-point reduction in a course grade, for each unapproved absence after the first; the policy is said to have an "educational" rather than a "disciplinary" purpose; the policies are authorized by Connecticut law)

Knight v. Board of Education, 348 N.E.2d 299, 303 (Ill. App. 4 Dist. 1976) (grade reductions for unexcused absences; "The legislation giving the districts power to make disciplinary rules empowers them to punish pupils for unexcused absences.")

Clark County Board of Education v. Jones, 625 S.W.2d 586, 588 (Ky. 1981) (expulsion for remainder of semester for "consum[ing] alcoholic beverages while on a school-sponsored band trip..."; school board had authority to adopt a rule providing that "suspension, not expulsion, shall be mandatory for the first [drug or alcohol] offense")

Slocum v. Holton Board of Education, 429 N.W.2d 607, 609, 610 (Mich. App. 1988) (lowering of first marking period grades by one full letter; under attendance policy, any student with more than three days of "excused absences" was required to make up the time missed in "after-hours" study sessions, failing which grades were reduced; the policy "is impliedly authorized by statute and is not arbitrary and unreasonable"; given the make-up provision, the policy "complements, [rather than] contravenes, certain statutorily prescribed responses to truancy...")

Haug v. Franklin, 690 S.W.2d 646, 650 (Tex. App. 3 Dist. 1985) (law school graduate's diploma withheld for failure to pay fines imposed by university for breach of its traffic and parking regulations; Texas statutes authorized the university's governing board to provide "money charges" for violations of regulations; enforcement in judicial proceedings is, under the statutory scheme, a "discretionary [alternative]")

*Other Related Decisions (6.c.)*

El Concilio Valle San Gabriel v. El Monte Elementary School District, No. C 177176, Superior Court, Los Angeles Cty., CA, Preliminary Injunction, Nov. 30, 1976 (Clearninghouse No. 19,501E) (challenge to statute under which state superintendent issues regulations requiring local school districts to report names and addresses of undocumented youth; as state superintendent has not issued regulations, local systems are enjoined from forwarding names and addresses)

## 7. Discipline Which Is Inconsistent with a Body's Own Rules

*Student Prevailed (7.)*

C.J. v. School Board of Broward County, 438 So. 2d 87 (Fla. App. 1983) (exclusion for summer session and following year for having knife at bus stop, allegedly in violation of school rule; as this knife was not a "weapon" as defined in school rule, discipline invalidated)

In the Matter of B.N., Worcester Public Schools, Opinion letter of Legal Counsel's Office, Mass. Dept. of Education, Oct. 24, 1989 (expulsion for assaulting another student; as school board rules provided "suspension not exclusion for this offense," the school board violated M. Gen. Laws Ch. 71, §37H, requiring districts to publish their discipline rules and file them with the state)

Tedeschi v. Wagner College, 427 N.Y.S. 2d 760, 764 (N.Y. 1980) (challenge to dismissal for academic and disciplinary reasons; plaintiff was not afforded a hearing procedure described as a "right" in a "guideline" distributed by a school official; based on "law of associations" or "a supposed contract between university and student" court "hold[s] that when a university has adopted a rule or guideline establishing the procedure to be followed in relation to suspension or expulsion that procedure must be substantially observed.") (see §15b. re remedy)

Galveston Independent School District v. Boothe, 590 S.W. 2d 553, 556-57 (Tex. Civ. App. 1979) (expulsion of high school student for possession of marijuana before the start of school day; the district failed to follow its rules in disciplining student)

*Student Did Not Prevail (7.)*

Shuman v. University of Minnesota Law School, 451 N.W.2d 71 (Minn. App. 1990) (one year suspensions for honor code violations; students "were given the procedures provided for in the honor code")

Rauer v. State University of New York, Albany, 552 N.Y.S.2d 983, 984 (A.D. 3 Dept. 1990) (long-term suspension for academic dishonesty; school followed its rules pertaining to academic dishonesty and student was afforded substantial procedural protections)

Beilis v. Albany Medical College of Union University, 525 N.Y.S. 2d 932, 933 (N.Y. App. 1988) (one-year suspension for second instance of cheating; in imposing the discipline, school officials, as required, substantially adhered to the institution's rules.

Stone v. Cornell University, 510 N.Y.S.2d 313, 314 (A.D. 3 Dept. 1987) (expulsion from summer program for high school students for use of drugs and alcohol in violation of code applicable to the summer program; the program "adhere[d] to its own rules")

Galiani v. Hofstra University, 499 N.Y.S.2d 182 (A.D. 3 Dept. 1986) (suspension for misconduct; "...determination to suspend the petitioner was rendered in accordance with the university's published regulations...")

Fain v. Brooklyn College of City University, 493 N.Y.S.2d 13, 14 (A.D. 2 Dept. 1985) (students found guilty of misconduct; "...the committee acted in complete compliance with its by-laws, as it is required to do...")

Boehm v. University of Pennsylvania Sch. of Vet. Med., 573 A.2d 575, 582 (Pa. Super. 1990) (long-term suspension from private university and other discipline for "behavior...compatible with cheating"; school "followed its Code of Rights punctiliously and ...the disciplinary proceeding complied with due process and [was] fundamentally fair")

Haug v. Franklin, 690 S.W.2d 646, 650 (Tex. App. 3 Dist. 1985) (law school graduate's diploma withheld for failure to pay fines imposed by university for breach of its traffic and parking regulations; the regulations provide for the sanction of withholding a diploma)

Rutz v. Essex Junction Prudential Committee, 457 A.2d 1368, 1374 (Vt. 1983) (expulsion; alleged lack of notice of charges; where student was "well aware of charges" and admitted

to them, and the district substantially complied with its regulations, there was "a clear absence of any prejudice")

*Other Related Decisions (7.)*

Morrison v. University of Oregon Health Sciences Center, 685 P.2d 439 (Oregon App. 1984) [review of order dismissing student from School of Dentistry for "lack of professional skills development and lack of adequate clincal performance...." Rulings (in reversing and remanding): The Academic Dismissal Hearing Committee erred by considering, during its deliberations, factual information outside the hearing record in violation of the school's guidelines and ORS 183.450(2)]

## 8. Discipline Which Is Inconsistent with a Substantive Standard of a State Statute or Regulation

*Student Prevailed (8.)*

Canfield v. School District No. 8, Proceeding No. J-842, District Ct., El Paso Cty., Colo., Reporter's Transcript of Opinion, 4/16/70 (Clearinghouse No. 3,284D) (challenge to expulsion for student's "intemperate speech and his mutilation of the flag..."; as this conduct did not constitute "behavior which was inimicable to the welfare, safety or morals of other pupils," within the meaning of the Colorado statute, the expulsion was illegal) (see §15b. re remedy)

W.A.N. v. School Board of Polk County, 504 So.2d 529 (Fla. Dist. Ct. App. 1987) (since transfer of student to separate facility was equivalent to suspension, principal and school board were required by Florida statute to employ parental assistance or other alternative measures prior to suspension)

Dorsey v. Bale, 521 S.W.2d 76 (Ky. 1975) (challenge to rule providing for reduction of grades for time missed for "unexcused absences," including days missed due to suspension; as the legislature established sanctions "for serious breaches of school regulations" without including grade reduction, the school board did not have authority to adopt that sanction) (see §15b. re remedy)

Rudge v. School Administrators District Six, Civ. Nos. CV-77-140, CV-77-141, Superior Ct., Cumberland Cty., Maine, Order, 3/1/77 [exclusions of students for remainder of year for coming to school under the influence of marijuana; court grants preliminary injunctive relief, finding insufficient likelihood that district can show that youth were "obstinately disobedient and disorderly ...", as required by Maine statutes, Title 20, §473(5)] (later, a different judge, viewing the exclusions as "suspension", found no statutory violation, and denied plaintiffs' motion for summary judgment)

In the Matter of B.N., Worcester Public Schools, Opinion letter of Legal Counsel's Office, Mass. Dept. of Education, Oct. 24, 1989 (expulsion for assaulting another student;

as school board rules provided "suspension not exclusion for this offense," the school board violated M. Gen. Laws Ch. 71, §37H, requiring districts to publish their discipline rules and file them with the state)

King v. Farmer, 424 N.Y.S. 2d 86 (Sup. Ct., Westchester Cty. 1979) (principal "dropped" student from rolls of high school for irregular attendance, in accord with district policy; truancy is not a ground for suspension or expulsion under Section 3214(3) of the New York Education Law) (see §15b. re remedy)

Matter of Mooney, 180 N.Y.L.J. No. 28, p. 12 (8/10/78) (Clearinghouse No. 25,136A) (principal improperly suspended students where suspensions exceeded the statutory limit of five days)

Turner v. Kowalski, 374 N.Y.S.2d 133 (N.Y. App. Div. 1975) (student was suspended for five days or less; Section 3214(3)(e) required some alternative instruction for "all suspended disorderly students whose conduct does not warrant corrective detention...")

Howard v. Clark, 299 N.Y.S. 2d 65 (Sup. Ct., Westchester Cty. 1969) (suspension from high school based upon arrest for criminal possession of a hypodermic instrument, off school grounds; facts did not establish a ground for suspension under §3214 of New York Education Law; defendants "...exceeded the powers conferred upon them by the Education Law...")

Shuman v. Cumberland Valley School District Board of Directors, 536 A.2d 490 (Pa. Cmwlth. 1988) (school board's withholding of diploma for disciplinary reasons after student "ha[d] successfully completed all the course-work required for graduation" violated statute)

James v. Wall, 783 S.W.2d 615 (Tex. App. 1989) (medical students, accused of cheating, made agreement with President on discipline; thereafter, they were given failing grades and dropped from the school; discipline involved improper application of governing regulations or "was administered by measures outside the Rules")

Quinlan v. University Place School District 83, 660 P.2d 329, 331 (Wash. App. 1983) (review of decision upholding 64-day suspension of "model student" who came to school dance after drinking one glass of champagne, based on school rule, providing for a suspension for "any use of alcohol"; discipline violated state regulation placing preconditions on lengthy suspensions)

Potter v. Miller, 287 S.E.2d 163, 164-65 (W.Va. 1981) (treating absences due to "bad conditions of the roads" as unexcused was inconsistent with state statute) (see §15b. re remedy)

*Student Did Not Prevail (8.)*

Garcia v. Los Angeles County Board of Education, 177 Cal. Rept. 29, 31-32 (Cal. App., 2d Dist. 1981) (5-day suspension and subsequent expulsion for "heated argument" with another student and possessing knife at school; given the nature of the violation, the Board was permitted to expel the student upon finding that "other means of correction are not feasible")

Walter v. School Board of Indian River County, 518 So.2d 1331, 1333-35 (Fla. App. 4 Dist. 1987) (expulsion for remainder of school year for possession of marijuana; "In light of the fact that no alternative measures must be taken prior to recommending expulsion, we agree with the School Board that the principal's failure to include a detailed report on what alternative measures were taken does not justify vacating the order of expulsion"; a Florida statute provided that an expulsion recommendation "shall include" such a report)

## 9. Discipline Which Is Excessive

*Student Prevailed (9.)*

Warren County Board of Education v. Wilkinson, 500 So.2d 455, 461 (Miss. 1986) (loss of all credit for semester for drinking two or three sips of beer at home with friend before last day of school; in dictum, court notes federal and state prohibitions of cruel and unusual punishment and continues: "The punishment inflicted here appears to us to be unreasonable when considered along with other offenses set forth in the handbook.")

Matter of Mooney, 180 N.Y.L.J. No. 28, p. 12 (8/10/78) (Clearinghouse No. 25,136A) (principal improperly suspended students where suspensions exceeded the statutory limit of five days)

Tomlinson v. Pleasant Valley School District, 479 A.2d 1169, 1171 (Pa. Cmwlth. 1984) (lower court reduced disciplinary sanctions for two cheerleaders who accepted drinks from a soda bottle during a game, taking second sips after realizing that the soda was mixed with whiskey; as the district made no formal record, the trial judge's discretion was as broad as the Board's; he did not abuse his discretion; "He carefully noted...that the girls were good students with no prior discipline problems and properly concluded that the punishment far exceeded the nature of the offense.")

*Student Did Not Prevail (9.)*

Scoggins v. Henry County Board of Education, 549 So.2d 99 (Ala. Civ. App. 1989) (permanent expulsion upheld where student had a history of disruptive misconduct and physical attacks and "less drastic" measures had been tried without success)

Adams v. City of Dothan Board of Education, 485 So.2d 757, 760-61 (Ala. Civ. App. 1986) (expulsion of ninth grader for most of school year for bringing alcohol on school campus in violation of school rule; where "use of alcohol and drugs had become a very serious problem" and "school officials felt that making students aware of the possibility of expulsion for possession of alcohol and drugs on school campus would have a significant deterrent effect on the students", "discipline "was [not] so severe as to be arbitrary and unjust")

Knight v. Board of Education, 348 N.E.2d 299, 303 (Ill. App. 4 Dist. 1976) ("We do not find the reduction in plaintiff's grades by one letter grade for a period of one quarter of the year in three subjects in consequence of two days of truancy to be so harsh as to deprive him of substantive due process.")

Forrest v. School City of Hobart, 498 N.E. 2d 14, 18-19 (Ind. App. 1986) (challenge to expulsion for remainder of year for smoking marijuana on school grounds; sanction not "grossly excessive"; court will not "second'guess" the legislature's approval of this sanction in the relevant statute)

Clinton Municipal Separate School District v. Byrd, 477 So.2d 237, 240 (Miss. 1985) (exclusion of two high school students for a semester for painting on wall on school grounds; the district's rule against defacing property and these punishments "are within the outer limits of the authority vested in the district...")

Rauer v. State University of New York, Albany, 552 N.Y.S.2d 983, 985 (A.D. 3 Dept. 1990) (long-term suspension for academic dishonesty was "not shocking to our sense of fairness")

Beilis v. Albany Medical College of Union University, 525 N.Y.S. 2d 932, 934 (A.D. 3 Dept. 1988) (one-year suspension for second instance of cheating; the penalty was "neither disproportionate to the offense of cheating or shocking to one's sense of fairness..."); see also Galiani v. Hofstra University, 499 N.Y.S.2d 182 (A.D. 3 Dept. 1986) (similar standard)

Keith v. Ball, 350 S.E.2d 720, 723 (W.Va. 1986) (expulsion of students for one year for false bomb threats; "With these facts in mind, we cannot say that the sentence did not fit the crime.")

North v. West Virginia Board of Regents, 332 S.E.2d 141, 146-47 (W.Va. 1985) (expulsion from medical school for falsification of application materials; plaintiff completed the program; the sanction was not excessive; "...not only was the action complained of justified, it may well have been the only appropriate response available to the university")

*Other Related Decisions (9.)*

Borkhuis v. Quinn, 551 N.Y.S.2d 82 (A.D. 4 Dept. 1990) (dismissal of bus driver for three acts of misconduct was disproportinate, taking account of her entire record; sanction not to exceed 12- month suspension without pay)

McFadden v. Board of Education, 544 N.Y.S.2d 885 (A.D. 2 Dept. 1989) (review of suspension of teacher for nine months for conduct unbecoming a teacher; "None of the sustained charges involved illegal conduct or an act of moral turpitude. Rather the conduct unbecoming a teacher pertained to the petitioner's choice of language directed to various students. In light of all circumstances of this case, particularly the petitioner's unblemished, 17-year teaching record in the school district, a sanction of suspension without pay f r a period in excess of six months is so disproportionate to the offense as to be shocking to one's sense of fairness (Matter of Pell v. Board of Educ. 34 N.Y. 2d 222, 233, 356 N.Y.S.2d 833, 313 N.E.2d 321).... [T]he matter is remitted to the respondent for the imposition of new penalty not to exceed suspension, without pay, for a period of six months.")

Harris v. Mechanicsville Central School District, 382 N.Y.S.2d 251 (S.Ct., Schenectady County, 1976) (dismissal of teacher held excessive as punishment for two acts of "insubordination" -- leaving meeting without consent and failing to carry out agreement concerning teaching of a certain book)

## 10. Discipline Which Implicates a State-Created Right to:

### 10. a. Education

*Student Prevailed (10.a)*

Convers v. Glenn, 243 So.2d 204, 207-08 (Fla. App., 2d Dist. 1971) (suspension from school for violation of hair length rule; "Unless the board can show some overriding necessity, this part of the child's nurture rests with the parent"; the school board "cannot deny [the student] the right to an education in the absence of a showing that his conduct as an individual, infringes on the rights of other students to an education"; "there is nothing in the record at this stage to justify this regulation")

In the Matter of B.N., Worcester Public Schools, Opinion letter of Legal Counsel's Office, Mass. Dept. of Education, Oct. 24, 1989 (expulsion for assaulting another student; Mass. Gen. Laws Ch. 76, §1 provides for "compulsory school attendance"; "In cases such as this, if a School Committee believes that a student has acted so as to constitute such a danger to others that s/he cannot be educated with others, then the School Committee must provide an alternative comparable program to that student")

Turner v. Kowalski, 374 N.Y.S.2d 133 (N.Y. App. Div. 1975) (student was suspended for five days or less; Section 3214(3)(e) required some alternative instruction for "all suspended disorderly students whose conduct does not warrant corrective detention...")

See Independent School District No. 8 v. Swanson, 553 P.2d 496, 501 (Okla. 1976) at §6b.

*Student Did Not Prevail (10.a)*

Adams v. City of Dothan Board of Education, 485 So.2d 757, 759-60 (Ala. Civ. App. 1986) (expulsion of student for most of one school year for bringing alcohol on school campus in violation of school rule; expulsion, in this setting, did not violate compulsory attendance law)

Walter v. School Board of Indian River County, 518 So.2d 1331, 1333-35 (Fla. App. 4 Dist. 1987) (expulsion for remainder of school year for possession of marijuana; under Florida statutes, provision of education during the expulsion period was in the school board's discretion)

Clinton Municipal Separate School District v. Byrd, 477 So.2d 237, 240 (Miss. 1985) (exclusion of two high school students for a semester for painting on wall on school grounds; the district's rule against defacing property and these punishments "further substantial legitimate interests of the school district..."; the court wrote that "the right to a minimally adequate public education created...by the laws of this state is...fundamental" and subject to "the full substantive and procedural protections of the due process clause of the Constitution of the State of Mississippi...")

Board of Education of City of Plainfield v. Cooperman, 105 N.J. 587, 523 A.2d 655, 661-62 (N.J. 1987) (question of procedures to apply in hearings on admission of children with AIDS, ARC or HTLV-III antibody to public schools; due process requires that parties have the right to call witnesses and to cross-examine adverse witnesses; the court notes, in part, a student's right to education under the New Jersey Constitution)

Craig v. Buncombe County Board of Education, 343 S.E.2d 222, 223 (N.C. App. 1986) (suspensions from school for violations of school board no-smoking rule; discipline did not violate "the 'fundamental right' to an education")

Keith D. v. Ball, 350 S.E.2d 720, 722-23 (W.Va. 1986) (expusion of students for one year for false bomb threats did not violate "fundamental constitutional right to education" which exists under Art. XII, §1 of state constitution; the right is not absolute and these students "have temporarily forfeited their right to education"; the court also notes: "The fact that the forfeiture is temporary is important.")

*Other Related Decisions (10.a.)*

Manjares v. Newton, 411 P.2d 901, 908 (Calif. 1966) [where refusal to provide bus transportation to students denied them access to education, although district was financially capable of doing so, district's action was "arbitrary and unreasonable..."; court notes significance of the "opportunity to attend school" (without citing a constitutional, or statutory provision affording a right to education)]

School Board of Seminole Cty. v. Leffler, 472 So.2d 481 (Fla. App. 1985) (juvenile judge does not have authority to require school board "to provide an educational program as an alternative to its expulsion of [a] child" named in a petition for delinquency)

Board of Education of City of Plainfield v. Cooperman, 105 N.J. 587, 523 A.2d 655, 661-62 (N.J. 1987) (question of procedures to apply in hearings on admission of children with AIDS, ARC or HTLV-III antibody to public schools; due process requires that parties have the right to call witnesses and to cross-examine adverse witnesses; the court notes, in part, a student's right to education under the New Jersey Constitution)

Potter v. Miller, 287 S.E.2d 163, 165 (W.Va. 1981) (students absent from school due to inadequate transportation; court notes in part that students had "a fundamental, constitutional right" to education under the state constitution); see also Kennedy v. Board of Education, 337 S.E.2d 905, 907 (W.Va. 1985) (same)

**10.b. Free Expression**

*Student Prevailed (10.b.)*

Myers v. Arcata Union High School District, 75 Cal. Reptr. 68, 72-74 (Cal. App., 1st Dist. 1969) (suspension for violation of policy that "extremes of hair style are not acceptable"; the school official responsible for its enforcement viewed it as barring "deviation from acceptable wear"; while hair length is subject to First Amendment protection, it may be regulated where there is "empirical evidence that an aspect of a student's dress has a disruptive effect..."; however, this policy is not "the kind of narrow exception to freedom of expression which a state may carve out...")

**10.c. Privacy**

*Student Prevailed (10.c)*

See Independent School District No. 8 v. Swanson, 553 P.2d 496, 503 (Okla. 1976) at 6b.

Chicago Board of Education v. Terrile, 47 Ill. App. 3d 75, 361 N.E.2d 778 (1977) (commitment to special school for truants violated due process rights by abridging liberties of association, privacy, and movement without demonstrating that such commitment both would meet the student's need and was the least restrictive means available)

*Student Did Not Prevail (10.c.)*

Shows v. Freeman, 230 So.2d 63 (Miss. 1969) (suspension for violation of rule that "male students should not wear their hair longer than two inches, or two finger widths, above the eyebrows"; "this was not an improper invasion of family privacy" since "[u]nusual male hair styles may disrupt and impede maintenance of proper classroom atmosphere or decorum")

**10.d. Be Free of Defamation**

*Student Prevailed (10.d.)*

Jenkins v. Ouachita Parish School Board, 459 So.2d 143 (La. App. 1984) (student alleged, in part, that principal's statement on student's conduct, used in disciplinary proceeding, was defamatory; complaint adequately alleged a defamation claim), review denied, 462 So.2d 652 (La. 1985)

**10.e. Substantive Due Process**

*Student Prevailed (10.e.)*

Convers v. Glenn, 243 So.2d 204, 207-08 (Fla. App., 2d Dist. 1971) (suspension from school for violation of hair length rule; "Unless the board can show some overriding necessity, this part of the child's nurture rests with the parent"; the school board "cannot deny [the student] the right to an education in the absence of a showing that his conduct as an individual, infringes on the rights of other students to an education"; "there is nothing in the record at this stage to justify this regulation")

## 11. Discipline Which Involves Arbitrary, Capricious or Unreasonable Conduct

*Student Prevailed (11.)*

Clark County Board of Education v. Jones, 625 S.W.2d 586, 588 (Ky. 1981) (expulsion for remainder of semester for "consum[ing] alcoholic beverages while on a school-sponsored band trip..."; the factual finding that the Board acted "arbitrarily" was not "clearly erroneous"; "Here, the trial court determined from the evidence that the appellant acted arbitrarily. Specifically, it found that the appellant only considered whether the appellees had consumed alcoholic beverages in deciding to expell them. No other factors - the previous general conduct of the students involved; the academic standing of the students; the probability of a recurring violation; and the consideration of alternative punishment or restrictions - were considered by the appellant in its action")

Board of Education of Harrodsburg v. Bentley, 383 S.W.2d 677, 680 (Ky. 1964) (exclusion of any student who marries subject to readmission after a year with constraints on participation in school activities; "the instant regulation is arbitrary and unreasonable.... The fatal vice of the regulation lies in the sweeping advance determination that every married student, regardless of the circumstances, must lose at least a year's schooling.")

Babcock v. Baptist Theological Seminary, 554 So.2d 90, 95-96 (La. App. 4 Cir. 1989) (faculty voted to withhold a degree from Babcock "having found him unfit religiously and spiritually to receive a ministerial degree"; refusal was "grossly unfair and arbitrary..." where school had acted as if student could earn degree despite earlier incident)

Waldman v. United Talmudical Academy, 558 N.Y.S.2d 781, 783 (Sup. Ct., Orange Cty. 1990) (children excluded from religious school based upon rule providing this outcome when parent was no longer qualified to be a member of congregation; "...to the extent that the children's expulsion came inexplicably six months after the father's expulsion, it must be annulled as arbitrary and capricious") (see §15b. re remedy)

Machosky v. State University of New York at Oswego, 546 N.Y.S. 2d 513, 515-16 (Sup. Ct., Oswego Cty., 1989) (failure to adjourn hearing to allow student to secure an advisor "was an abuse of discretion"; student had made "a good-faith effort" to secure an advisor and it "does not appear that any prejudice would have occurred to the university..."; in addition, in circumstances of this case, the failure to file promptly charges against student "was unreasonable and an abuse of discretion"; complainants were part-time university employees) (see §15b. re remedy)

James v. Wall, 783 S.W.2d 615 (Tex. App. 1989) (medical students, accused of cheating, made agreement with President on discipline; thereafter, they were given failing grades and dropped from the school; grades were improper because they were "based on other than academic grounds")

*Student Did Not Prevail (11.)*

Springdale Board of Education v. Bowman, 740 S.W.2d 909, 913 (Ark. 1987) (expulsion for remainder of semester for violation of drug policy which included use of medicine; based on evidence, board "could reasonably believe" that student paid for and received "diet aids" "covered under Board policy"; therefore, the Board's action was not "arbitrary, capricious [or] contrary to law")

Lusk v. Triad Community Unit 2, 551 N.E. 2d 660 (Ill. App. 1990) (expulsion for remainder of school year for having pistol and ammunition in school is not "arbitrary, unreasonable, capricious or oppressive")

Forrest v. School City of Hobart, 498 N.E. 2d 14, 17-18 (Ind. App. 1986) (challenge to expulsion for remainder of year for smoking marijuana on school grounds; action not "arbitrary and capricious"; district was not required by statute to consider factors such as student's "previous disciplinary record" and "his academic record"; moreover, "such factors were in fact before the Board")

Coveney v. President and Trustees of the College of the Holy Cross, 445 N.E.2d 136, 138-39 (Mass. 1983) (expulsion for interfering with the rights of other students; "college did not act in bad faith or in an arbitrary or capricious manner...," when it expelled student for violation of a rule set forth "in the student handbook," of which he had notice; student had "two hearings and...the opportunity to make statements")

Consolidated School Dist. No. 2 v. King, 786 S.W.2d 217, 220 (Mo. App. 1990) (lengthy suspension for possessing knife at school in violation of school rule; action not "unreasonable" despite this student's generally strong school record)

Cross v. Princeton City School District, 550 N.E.2d 219 (Ohio Com. Pl. 1989) (10-day exclusion from school for possession of drug paraphernalia on school grounds in violation of school rule; action not "arbitrary, capricious or unreasonable..."; board was not required "to be swayed from the policy because of Robert's grades, redeeming qualities, or the circumstances herein..."; court applied statutory standard of review)

*Other Related Decisions (11.)*

Manjares v. Newton, 411 P.2d 901, 908 (Calif. 1966) [where refusal to provide bus transportation to students denied them access to education, although district was financially capable of doing so, district's action was "arbitrary and unreasonable..."; court notes significance of the "opportunity to attend school" (without citing a constitutional, or statutory provision affording a right to education)]

Engel v. Sobel, 556 N.Y.S.2d 179 (A.D. 3 Dept. 1990) (review of decision authorizing school board to suspend teacher without pay for one semester for misconduct; as the commissioner departed from "prior administrative precedent," without adequate explanation, his decision was "arbitrary and capricious")

Heisler v. New York Medical College, 449 N.Y.S.2d 834 (Sup. Ct., Westchester Cty. 1982) (challenge to academic dismissal; while a school rule provided that students with certain course failures "will be dismissed," three other students were allowed to repeat the year due to extenuating circumstances, involving "patently weaker excuses"; "...when a school

deviates from its rules and makes exceptions thereto, it must employ some understandable, unified standards. The failure to establish and maintain such standards constitutes an impermissible abuse of discretion and a lack of good faith on the part of the educational institution")

Hamilton v. Secondary Schools Activities Commission, 386 S.E.2d 656 (W.Va. 1989) (exclusion from high school football in senior year based upon rule limiting eligibility to three years; student was academically ineligible during one year; rule was not "reasonable" [W.Va. Code, 18-2-25], as applied this student; "The legitimate purposes of the Commission's rules-to-prevent red-shirting - may be accomplished in a more reasonable and less restrictive way.")

Sigmon v. Board of Education, 324 S.E.2d 352 (W.Va. 1984) (school board refused to extend bus route, on which some youth were already riding an hour and a half; board abused discretion by failing to "evaluate seriously" reorganization of routes to minimize travel time and serve all students)

## 12. Disparity (Including Denial of Equal Protection) in Discipline

*Student Prevailed (12.)*

Makanui v. Department of Education, 721 P.2d 165, 170-71 (Hawaii App. 1986) (challenge to discipline imposed on student, including exclusion from track team, after he set off fireworks in school parking lot; the complaint alleged, generally, discrimination on the basis of race, sex and marital status; the complaint alleged an equal protection claim)

Fussell v. Louisiana Business College of Monroe, Inc., 478 So.2d 652 (La. App. 1985) (challenge to student's exclusion from proprietary school, for asserted rule violations and misconduct, after she was involved in protest of fee structure; the school's action breached its contract with plaintiff, in part because she acted within rules and other students engaging in identical conduct were not disciplined; school provided additional opportunity to prove dismissal justified); 519 So.2d 384 (La. App. 1988) (school failed to show justification; evidence did not establish "[disruption] [of] the scholastic program") (see §15a. re remedy)

*Student Did Not Prevail (12.)*

Carroll v. City of Dothan Board of Education, 510 So.2d 246, 249 (Ala. 1987) (expulsion for remainder of school year for being intoxicated at school dance; facts did not establish improper "selective enforcement" violative of equal protection principles; there were explanations for lesser sanctions in other cases)

Knight v. Board of Education, 348 N.E.2d 299, 304 (Ill. App. 4 Dist. 1976) (grade reductions for unexcused absences; "There was...a sufficiently rational connection between the grade reduction he was given and his truancy to satisfy the requirements of both equal protection and substantive due process.")

Coveney v. President and Trustees of the College of the Holy Cross, 445 N.E.2d 136, 138-39 (Mass. 1983) (expulsion for interfering with the rights of other students; sanction was not "arbitrary or capricious" where another student "received a lesser punishment," but his misconduct was less serious)

Craig v. Buncombe County Board of Education, 343 S.E.2d 222, 224 (N.C. App. 1986) (suspensions from school for violation of school board's no-smoking rule; fact that rule applies only to students does not give rise to an equal protection claim)

Forrest v. School City of Hobart, 498 N.E. 2d 14, 20-21 (Ind. App. 1986) (challenge to expulsion for remainder of year for smoking marijuana on school grounds; trial court quashed subpoena for disciplinary records "for the prior several years"; "We believe that a balance must exist between a plaintiff's access to school disciplinary records and a school's protection from wholly unfounded fishing expeditions by disgruntled students. Therefore, before a plaintiff is entitled to school disciplinary records, he or she must submit interrogatories to the school. If the school's response, made under oath, indicates that it has given a substantially different penalty to a student who committed the same offense, then the plaintiff should be allowed access to that student's disciplinary record. If the record indicates that the difference in penalty has no principled basis, then the plaintiff will have the information necessary to argue that the school treated him arbitrarily."; no abuse of discretion here)

*Other Related Decisions (12.)*

Heisler v. New York Medical College, 449 N.Y.S.2d 834 (Sup. Ct., Westchester Cty. 1982) (challenge to academic dismissal; while a school rule provided that students with certain course failures "will be dismissed," three other students were allowed to repeat the year due to extenuating circumstances, involving "patently weaker excuses"; "...when a school deviates from its rules and makes exceptions thereto, it must employ some understandable, unified standards. The failure to establish and maintain such standards constitutes an impermissible abuse of discretion and a lack of good faith on the part of the educational institution")

Shrewsbury v. Board of Education, 265 S.E.2d 767 (W.Va. 1980) (challenge to school board's failure to provide school bus transportation to youth living on narrow, rural road; as the district provides transportation to similarly situated students, including by use of "a small van bus" in one case, its action violated the equal protection clause of the Fourteenth Amendment); see also Potter v. Miller, 287 S.E.2d 163, 165 (W.Va. 1981) (same); Kennedy v. Board of Education, 337 S.E.2d 905 (W.Va. 1985) (same)

## 13. Discipline Which Involves a Contract Violation (Re a Private School, or Post-Secondary Educational Institution)

*Student Prevailed (13.)*

Harvey v. Palmer College of Chiropractic, 363 N.W.2d 443 (Iowa App. 1984) (expulsion from private college based upon distribution of editorial cartoon; "...there were sufficient irregularities in the way the case was initiated and the appointment and composition of the SJC and Appeals Committee to generate a jury question on whether the school substantially complied with the letter and the spirit of its written regulations...")

Fussell v. Louisiana Business College of Monroe, Inc., 478 So.2d 652 (La. App. 1985) (challenge to student's exclusion from proprietary school, for asserted rule violations and misconduct, after she was involved in protest of fee structure; the school's action breached its contract with plaintiff, in part because she acted within rules and other students engaging in identical conduct were not disciplined; school provided additional opportunity to prove dismissal justified); 519 So.2d 384 (La. App. 1988) (school failed to show justification; evidence did not establish "[disruption] [of] the scholastic program") (see §15a. re remedy)

Tedeschi v. Wagner College, 427 N.Y.S. 2d 760, 764 (N.Y. 1980) (challenge to dismissal for academic and disciplinary reasons; plaintiff was not afforded a hearing procedure described as a "right" in a "guideline" distributed by a school official; based on "law of associations" or "a supposed contract between university and student" court "hold[s] that when a university has adopted a rule or guideline establishing the procedure to be followed in relation to suspension or expulsion that procedure must be substantially observed.") (see §15b. re remedy)

James v. Wall, 783 S.W.2d 615 (Tex. App. 1989) (medical students, accused of cheating, made agreement with President on discipline; thereafter, they were given failing grades and dropped from the school; plaintiffs pled a contractual right to continue to attend school)

*Student Did Not Prevail (13.)*

Life Chiropractic College v. Fuchs, 337 S.E.2d 45 (Ga. App. 1985) (suspension for falsification of grade change forms; denying student the right to confront witnesses did not violate provision in bulletin specifying that "[d]ue process is followed in all [disciplinary] cases"; the bulletin "did not guarantee" confrontation; plaintiff did not show prejudice and there was "solid evidentiary support" for the school's conclusion; the student was not subjected to "arbitrary or capricious treatment")

*Other Related Decisions (13.)*

Dillingham v. University of Colorado Bd. of Regents, 790 P.2d 851, 854-55 (Colo. App. 1989) (dismissal of student from medical school program for academic reasons; "In view of defendants' failure to comply with the notice and hearing provision of the agreement, we conclude they breached the training agreement.")

## 14. Appeal

### 14.a. Adequacy of Evidence of Violation

*Student Prevailed (14.a.)*

Adams v. School Board of Brevard County, 470 So.2d 760, 763 (Fla. App. 5 Dist. 1985) (review of expulsions of five students for violation of school drug policy; the key issue was whether students represented that pills which they bought, used, or sold were controlled substances; there was "sufficient evidence" to support the charges in two instances; there was "no evidence" in three cases)

McEntire v. Brevard County School Board, 471 So.2d 1287, 1288 (Fla. App. 5 Dist. 1985) (expulsion for "possessing and selling pills represented to be speed on the [high school] campus..."; "...there simply was no competent substantial evidence to support the Board finding that McEntire violated [the rule]..." (see §15b. re remedy)

Fain v. Brooklyn College of City University, 493 N.Y.S.2d 13, 15 (A.D. 2 Dept. 1985) (students found guilty of misconduct; the hearing body's determinations "were not supported by substantial evidence")

*Student Did Not Prevail (14.a)*

Jones v. Brevard County School Board, 470 So.2d 760 (Fla. App. 5 Dist. 1985) (expulsion for remainder of year for selling at school pills represented to be "speed"; "there is evidence which the Board was free to believe..." that the student was guilty as charged)

Birdsey v. Grand Blanc Community Schools, 344 N.W. 2d 342, 345 (Mich. App. 1983) (expulsion; court bound by school board findings "if there is competent, material and substantial evidence to support them"; based upon state constitution)

Consolidated School Dist. No. 2 v. King, 786 S.W.2d 217, 219 (Mo. App. 1990) (lengthy suspension for possessing knife at school in violation of school rule; "...competent and substantial evidence supported the District's suspension order")

Reasoner v. Meyer, 766 S.W.2d 161, 164-65 (Mo. App. 1989) (suspension for assaulting another student; "The decisions of the board and the Circuit court affirming Justyn's suspension were supported by competent and substantial evidence upon the whole record.")

Napolitano v. Princeton University Trustees, 453 A.2d 263, 275 (N.J. Super. A.D. 1982) (withholding of degree for one year for plagiarism; trial judge not required to conduct a full hearing on facts; "He concluded, regardless whether he found the evidence sufficient, substantial or under any standard of evidence required, that the charge of plagiarism against plaintiff was proved".)

### 14.b. Other Issues

*(no entries in this edition)*

## 15. Remedies

### 15.a. Damages

*Student Prevailed (15.a)*

Fussell v. La. Business College of Monroe, 519 So.2d 384, 387-88 (La. App. 1988) (exclusion from proprietary school breached contract; as plaintiff "received no academic credits and nothing of scholastic value," her payment ($2,087) must be returned; court also awarded $1,500 in "general damages" for delayed entry in the work force)

Jenkins v. Ouachita Parish School Board, 459 So.2d 143 (La. App. 1984) (student, expelled from school system, alleged that action was racially discriminatory and violative of due process standards; he further alleged that principal's statement about his conduct was defamatory; court reiterated that Louisiana recognizes a damage claim for wrongful expulsion, and held that complaint properly alleged a defamation claim), review denied, 462 So.2d 652 (La. 1985)

In the Matter of David Cloud, File No. 87399, Dist. Ct., Juv. Div., 4th Dist., Hennepin Cty., Minn., Findings and Order, Feb. 28, 1977 (Clearinghouse No. 18,666b) (suspension in violation of "Pupil Fair Dismissal Act"; as violation was not "willful," punitive damages are not called for; student was denied "for a period of some weeks," education, the companionship of others, and "special training and counselling" provided by an expert staff; in the absence of any proffered method of fixing damages or an amount, they are fixed at $500)

### 15.b. Other Remedies (Reinstatement, Expungment, Compensatory Services, Other "Make Whole" Relief)

*Student Prevailed (15.b)*

Aguirre v. San Bernardino City Unified School District, 170 Cal. Reptr. 205, 214-16 (Cal. App., 4th Dist. 1981) (unlawful expulsion; expulsion must be "annulled" and the record expunged)

Canfield v. School District No. 8, Proceeding No. J-842, District Ct., El Paso Cty., Colo., Reporter's Transcript of Opinion, 4/16/70 (Clearinghouse No. 3,284D); (unlawful expulsion; "the board is directed to reinstate [student] forthwith, and further to take appropriate action to assist him in making up the work lost by his expulsion")

McEntire v. Brevard County School Board, 471 So.2d 1287, 1289 (Fla. App. 5 Dist. 1985) (unlawful expulsion; school board must "expunge from the [student's] school record any and all references and documentation relative to his expulsion and...take any necessary steps to place him into the educational status he would have had had it not been for his expulsion" ); see also Adams v. School Board of Brevard County, 470 So.2d 760, 763 (Fla. App. 5 Dist. 1985) (same remedy for three students)

Dorsey v. Bale, 521 S.W.2d 76 (Ky. 1975) (unauthorized reduction of grades; defendants must "restore the deducted points of appellees' grades")

Sprague v. Harrison Community Schools, Case No. 80-005300-PZ, Circuit Court, Clare Cty., Mich., Opinion, 9/10/80 (Clearinghouse No. 29,225B) (unlawful denial of course credit; defendants must provide academic credit to plaintiffs and class members who would have earned it but for the Policy; they must also provide "meaningful remedial and tutoring services for members of the class" who accepted a "home pass.")

Waldman v. United Talmudical Academy, 558 N.Y.S.2d 781, 783 (Sup. Ct., Orange Cty. 1990) (children excluded from school; Rabbi failed to comply with court's order requiring their readmission; civil contempt fine shall be used "to tutor the infant petitioners...")

Machosky v. State University of New York at Oswego, 546 N.Y.S. 2d 513, 517 (Sup. Ct., Oswego Cty. 1989) (challenge to six-month suspension for misconduct; where student was excluded for six weeks before stay and experienced other "punishment," a remand for a new hearing would not serve a useful purpose and petitioner must be immediately reinstated as a student in good standing)

Underwood v. Board of Education, 498 N.Y.S.2d 907 (A.D. 3 Dept. 1986) (unlawful suspensions imposed by principal; "school records must be expunged")

Tedeschi v. Wagner College, 427 N.Y.S.2d 760 (N.Y. 1980) (wrongful exclusion from college; plaintiff must be reinstated before the September term unless the defendants provide a proper hearing)

King v. Farmer, 424 N.Y.S.2d 86 (Sup. Ct., Westchester Cty. 1979) (student improperly dropped from school rolls; student must be "reinstate[d]"; records of termination must be "annulled")

Matter of Blackman, 419 N.Y.S.2d 796 (Sup. Ct., Ulster Cty. 1978) (student improperly dropped from class for truancy; failure in course "vacated" and student permitted to return to school and take final examination)

Shuman v. Cumberland Valley School District Board of Directors, 536 A.2d 490, 492 (Pa. Comwlth. 1988) (where diploma was withheld in violation of statute, court ordered that it be issued within 30 days)

Katzman v. Cumberland Valley School District, 479 A.2d 671, 674 (Pa. Cmwlth. 1984) (grades reduced pursuant to unauthorized policy; grades must be readjusted to reflect marks actually earned)

Potter v. Miller, 287 S.E.2d 163, 165 (W.Va. 1981) (absences due to poor road conditions treated as unexcused in violation of state statute; school district must adopt lawful attendance policy)